

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-112702-001 DT

08/18/2014

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT
S. Perez
Deputy

STATE OF ARIZONA

NICHOLAS D MICHAUD

v.

KYLE EDWARD SMITH (001)

DAVID L ANDERSON

**COMPREHENSIVE PRETRIAL CONFERENCE/TRIAL ORDERS
STATUS CONFERENCE SET
TRIAL AFFIRMED**

10:10 a.m.

Courtroom SCT 6B

State's Attorney:	Jordyn Raimondo
Defendant's Attorney:	David Anderson
Defendant:	Present

Court Reporter, Gail Ferguson, is present.

A record of the proceeding is also made by audio and/or videotape.

This is the time set for Comprehensive Pretrial Conference.

A settlement offer has been extended. The parties intend to schedule a settlement conference. The current offer expires on 10/3/2014.

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IT IS ORDERED setting this matter for Status Conference on **09/30/2014 at 8:30 a.m. in this division.**

IT IS FURTHER ORDERED affirming the Final Trial Management Conference scheduled for 10/27/14 at 8:30 a.m. in this division and Trial set for 11/03/2014 at 8:00 a.m. before the Master Calendar Assignment Judge.

Comprehensive Pretrial Statement:

A. Status of Case: A plea offer was made. The offer expires on 10/03/2014. A settlement conference was not held. A Donald advisement was not made.

B. Status of Disclosure: Disclosure is completed.

C. The number of days for trial is expected to be 3-4.

D. The number of witnesses (combined for both sides) is expected to be 3-5. The number of out of state witnesses is expected to be 0. The number of expert witnesses is expected to be 1-2.

E. Status of the interviews: The number of interviews completed is 0. The number of interviews left to complete is all. The number of depositions required is 0.

F. An interpreter is not required for this trial.

G. The number of jurors required for this trial is 8. The number of requested alternates is 2.

H. The State is requesting an aggravating factors trial to the jury.

I. Counsel has not submitted special jury instructions.

J. Counsel has not requested a lesser-included offense.

K. A substantive motion is not anticipated by one or more of the parties.

L. A motion in limine is not anticipated by one or more of the parties.

IT IS FURTHER ORDERED that the Joint Pretrial Statement (JPTS) is due in the case management division by 5:00 p.m., five (5) judicial days before the FTMC.

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IT IS FURTHER ORDERED with the JPTS, Counsel shall deliver to the case management division, copies of the following:

A. A jointly-completed time and witness estimate list. The Court will use the list to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause.

B. A joint set of agreed upon preliminary and final jury instructions, including Preliminary Criminal RAJI or standard RAJI.

C. Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993).

D. Proposed Voir Dire questions which the Court will give. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of voir dire.

E. Any juror notebooks. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents into evidence is necessary. Key exhibits may be included, along with diagrams, photographs, and timelines.

IT IS FURTHER ORDERED that any disclosure and/or discovery shall be completed no later than seven (7) days prior to trial. Any party seeking further disclosure and/or discovery after the discovery deadline shall seek leave of the Court by motion supported by affidavit to extend the time for disclosure and/or discovery. Parties may extend the deadline by written stipulation which waives any objections to the late disclosure and/or discovery.

MOTIONS IN LIMINE

Any motions in limine shall be filed twenty (20) days before the FTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): "The primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a motion in limine may be filed no later than ten (10) days thereafter. The Court will rule on the motions in limine without oral argument. If the Court wishes to hear argument, the argument will be heard at the morning of the FTMC.

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PRETRIAL MOTIONS

All pretrial motions must be filed in writing thirty (30) days before the FTMC. All motions must comply with Rule 35.1 including setting forth a sufficient factual basis for the motion. Failure to file a sufficient motion may result in the motion being denied without evidentiary hearing. See: Rule 16.1[c] Rule 16.2 [b]; State v. Anaya 170 Ariz. 436, 443 (1991); State v. Wilson 164 Ariz. 406, 407 (1990) and State v. Alvarado 121 Ariz. 485, 487 (1979).

All pretrial motions shall be filed with this division.

The Court will hear and rule upon objections at the FTMC. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the FTMC or will be deemed to have been waived.

IT IS FURTHER ORDERED that counsel, at the FTMC, shall be prepared to discuss:

- A. Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
- B. Stipulations for the foundation and authenticity of exhibits.
- C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and voir dire.
- D. Any special scheduling or equipment issues.
- E. Status of settlement of the case.

EXPEDITED DISCOVERY

If there are any issues as to the disclosure required under Rule 15, the parties shall attempt to resolve the issue under Rule 15.7 (b). After personal consultation, the party seeking relief shall file a written motion setting forth the issue and requested relief. This motion, the opposing parties' response, and any reply shall be filed with this division.

All parties shall comply with Rule 15 disclosure orders. Failure to comply could result in sanctions which could include preclusion of witnesses, monetary fines, or any other sanction which is deemed appropriate.

FAILURE TO APPEAR

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A defendant's failure to appear at any final trial management conference, trial, evidentiary hearing, or any hearing set before the court may result in a bench warrant being issued for his or her arrest and the FTMC, trial, evidentiary hearing or any hearing set before the court may be conducted in the defendant's absence.

CONTINUANCE OF TRIAL

The trial date shall not be continued unless a written motion to continue is filed at least five days before trial. A continuance will not be granted unless the motion shows that extraordinary circumstances exist. (Rule 8.5, Rules of Criminal Procedure and guidelines thereto).

INTERPRETER

It is the responsibility of counsel to notify the court before which a hearing will be held 48 hours in advance of any hearing needing an interpreter for a victim or witness (10 business days for any language other than Spanish).

IT IS FURTHER ORDERED affirming prior release orders.

LAST DAY: 12/02/2014.

10:14 a.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.